

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

RICHARD AUSTIN, an individual, on  
behalf of himself, the general public, and  
all others similarly situated,

Plaintiff,

vs.

AMAZON.COM, INC., a Delaware  
Corporation authorized to do business in  
the State of Washington,

Defendant.

Case No. C-09-1679 JLR

**DEFENDANT AMAZON.COM'S ANSWER  
TO PLAINTIFF'S THIRD AMENDED  
COMPLAINT**

**RESPONSE TO PLAINTIFFS' ALLEGATIONS**

Defendant Amazon.com, Inc. ("Amazon" or "Defendant"), by and through its counsel of record, hereby answers the Third Amended Complaint ("Complaint") filed by Plaintiff Richard Austin ("Plaintiff"), and responds as follows in the numbered paragraphs below:

Amazon denies any factual allegations in the first and second Paragraphs of the Complaint. Amazon also avers that the allegations contained in the first and second Paragraphs of the Complaint constitute conclusions of law to which no response is required.

DEFENDANT'S ANSWER TO PLAINTIFF'S  
THIRD AMENDED COMPLAINT

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**JURISDICTION AND VENUE**

1  
2 1. Amazon admits that this Court has subject matter jurisdiction over this matter, as  
3 alleged in Paragraph 1 of the Complaint.

4 2. Amazon admits that venue is proper in this District, as alleged in Paragraph 2 of  
5 the complaint.

**COLLECTIVE ACTION ALLEGATIONS**

6  
7 3. Amazon denies the allegations contained in Paragraph 3 of the Complaint because  
8 this action is not appropriate for class or collective action treatment. Amazon also avers that the  
9 allegations contained in Paragraph 3 of the Complaint constitute conclusions of law to which no  
10 response is required.

**STATE LAW SUBCLASS**

11  
12 4. Amazon denies the allegations contained in Paragraph 4 of the Complaint because  
13 this action is not appropriate for class or collective action treatment. Amazon also avers that the  
14 allegations contained in Paragraph 4 of the Complaint constitute conclusions of law to which no  
15 response is required.

16 5. Amazon avers that the allegations contained in Paragraph 5 of the Complaint  
17 constitute conclusions of law to which no response is required.

**COLLECTIVE ACTION ALLEGATIONS**

18  
19 6. (a) Amazon lacks knowledge or information sufficient to form a belief as to  
20 the truth of the allegations contained in Paragraph 6 of the Complaint, or subsection (a) of  
21 Paragraph 6.

22 (b) Amazon admits that Plaintiff was employed as a “Warehouse Associate”  
23 for Amazon in the State of Nevada from approximately September 2008 to approximately August  
24 2009, as averred in subsection (b) of Paragraph 6 of the Complaint.

25 (c) Amazon admits that Plaintiff worked more than 40 hours in a week on at  
26 least one occasion as alleged in Paragraph 6, subsection (c) of the Complaint.

27 (d) Amazon denies the allegations contained in Paragraph 6, subsection (d) of  
28 the Complaint.

(e) Amazon denies the allegations contained in Paragraph 6, subsection (e) of the Complaint.

(f) Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, subsection (f) of the Complaint.

7. Amazon denies the allegations contained in Paragraph 7 of the Complaint because this action is not appropriate for class or collective action treatment. Amazon also avers that the allegations contained in Paragraph 7 of the Complaint constitute conclusions of law to which no response is required.

### **STATE LAW SUBCLASS ACTION ALLEGATIONS**

8. Amazon incorporates by reference its responses to Paragraphs 1 through 7, inclusive, of the Complaint.

9. Amazon denies the allegations contained in Paragraph 9 of the Complaint because this action is not appropriate for class or collective action treatment. Amazon also avers that the allegations contained in Paragraph 9 of the Complaint constitute conclusions of law to which no response is required.

10. Amazon denies the allegations contained in Paragraph 10 of the Complaint because this action is not appropriate for class or collective action treatment. Amazon also avers that the allegations contained in Paragraph 10 of the Complaint constitute conclusions of law to which no response is required.

### **DEFENDANT**

11. Amazon admits that it is a Delaware corporation that is licensed to do business and actually doing business in the State of Washington, as alleged in Paragraph 11 of the Complaint. Amazon further admits that its principal place of business and headquarters are in the State of Washington, as alleged in Paragraph 11 of the Complaint. Amazon lacks knowledge or information sufficient to form a belief as to what Plaintiff means by “‘Distribution Centers’ similar to the ones Plaintiff was employed in,” but admits that it has operations in the states Plaintiff lists in Paragraph 11 of the Complaint.

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**THE CONDUCT**

12. Amazon admits that Plaintiff was employed as a “Warehouse Associate,” which was a non-exempt hourly position, for Amazon from approximately September 2008 to approximately August 2009, as alleged in Paragraph 12 of the Complaint. Amazon admits that it has a rounding policy in which employees’ time is rounded to the nearest quarter hour. Amazon lacks knowledge or information sufficient to form a belief as to whether the policy referred to in Paragraph 12 of the Complaint is Amazon’s official “Rounding Policy” as Plaintiff has not attached any exhibits to his Complaint. Amazon denies all other allegations contained in Paragraph 12 of the Complaint.

13. Amazon denies the allegations in Paragraph 13 of the Complaint.

14. Amazon admits that its rounding policy is facially neutral. Amazon denies all other allegations contained in Paragraph 14 of the Complaint.

15. Amazon denies all factual allegations contained in Paragraph 15 of the Complaint. Amazon lacks knowledge or information sufficient to form a belief as to the policy to which Plaintiff refers in Paragraph 15 of the Complaint, as Plaintiff has not attached any exhibits to his Complaint.

16. Amazon denies the allegations in Paragraph 16 of the Complaint.

17. Amazon denies the allegations in Paragraph 17 of the Complaint.

18. Amazon denies the factual allegations in Paragraph 18 of the Complaint. Amazon lacks knowledge or information sufficient to form a belief as to the policy to which Plaintiff refers in Paragraph 18 of the Complaint, as Plaintiff has not attached any exhibits to his Complaint.

19. Amazon denies the allegations in Paragraph 19 of the Complaint. Amazon also avers that the allegations in Paragraph 19 of the Complaint constitute conclusions of law to which no response is required.

20. Amazon denies the allegations in Paragraph 20 of the Complaint. Amazon also avers that the allegations in Paragraph 20 of the Complaint constitute conclusions of law to which no response is required. Amazon lacks knowledge or information sufficient to form a belief as to

1 the policy to which Plaintiff refers in Paragraph 20 of the Complaint, as Plaintiff has not attached  
2 any exhibits to his Complaint.

3 21. Amazon denies the allegations in Paragraph 21 of the Complaint. Amazon also  
4 avers that the allegations in Paragraph 21 of the Complaint constitute conclusions of law to which  
5 no response is required.

6 22. Amazon denies the allegations in Paragraph 22 of the Complaint. Amazon also  
7 avers that the allegations in Paragraph 22 of the Complaint constitute conclusions of law to which  
8 no response is required.

9 23. Amazon denies the allegations in Paragraph 23 of the Complaint.

10 24. Amazon denies the allegations in Paragraph 24 of the Complaint. Amazon also  
11 avers that the allegations in Paragraph 24 of the Complaint constitute conclusions of law to which  
12 no response is required.

13 25. Amazon avers that the allegations in Paragraph 25 of the Complaint constitute  
14 conclusions of law to which no response is required.

15 26. Amazon avers that the allegations in Paragraph 26 of the Complaint constitute  
16 conclusions of law to which no response is required.

### 17 **FIRST CAUSE OF ACTION**

18 27. Amazon incorporates by reference its responses to Paragraphs 1 through 26,  
19 inclusive, of the Complaint.

20 28. Amazon denies the allegations in Paragraph 28 of the Complaint. Amazon also  
21 avers that the allegations in Paragraph 28 of the Complaint constitute conclusions of law to which  
22 no response is required.

23 29. Amazon avers that the allegations in Paragraph 29 of the Complaint constitute  
24 conclusions of law to which no response is required.

25 30. Amazon avers that the allegations in Paragraph 30 of the Complaint constitute  
26 conclusions of law to which no response is required.

27 31. Amazon avers that the allegations in Paragraph 31 of the Complaint constitute  
28 conclusions of law to which no response is required.

32. Amazon denies the allegations in Paragraph 32 of the Complaint. Amazon also avers that the allegations in Paragraph 32 of the Complaint constitute conclusions of law to which no response is required.

33. Amazon avers that the allegations in Paragraph 33 of the Complaint constitute conclusions of law to which no response is required.

34. Amazon denies the allegations in Paragraph 34 of the Complaint.

35. Amazon denies the allegations in Paragraph 35 of the Complaint. Amazon also avers that the allegations in Paragraph 35 of the Complaint constitute conclusions of law to which no response is required.

36. Amazon denies that collective action in this case is appropriate, denies that Plaintiff has been aggrieved, and denies that members of the collective class Plaintiff purports to represent should be notified of the pendency of this action, as alleged in Paragraph 36 of the Complaint. Amazon otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint.

37. Amazon denies that Plaintiff and the members of the class he purports to represent are entitled to any type of remedy, relief or damages, including the relief requested in Paragraph 37 of the Complaint.

38. Amazon denies that Plaintiff is entitled to any type of remedy, relief or damages, including the relief requested in Paragraph 38 of the Complaint. Amazon also avers that the allegations in Paragraph 38 of the Complaint constitute conclusions of law to which no response is required.

## **SECOND CAUSE OF ACTION**

39. Amazon incorporates by reference its responses to Paragraphs 1 through 38, inclusive, of the Complaint.

40. Amazon denies the allegations in Paragraph 40 of the Complaint. Amazon also avers that the allegations in Paragraph 40 of the Complaint constitute conclusions of law to which no response is required.

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41. Amazon avers that the allegations in Paragraph 41 of the Complaint constitute conclusions of law to which no response is required.

42. Amazon avers that the allegations in Paragraph 42 of the Complaint constitute conclusions of law to which no response is required.

43. Amazon denies the allegations in Paragraph 43 of the Complaint. Amazon also avers that the allegations in Paragraph 43 of the Complaint constitute conclusions of law to which no response is required.

44. Amazon avers that the allegations in Paragraph 44 of the Complaint constitute conclusions of law to which no response is required.

45. Except to admit that Plaintiff was terminated from his employment more than thirty days prior to the filing of the Complaint, Amazon denies the allegations in Paragraph 45 of the Complaint.

46. Amazon admits that Plaintiff seeks wages pursuant to NRS § 608.050 in his Complaint. Amazon avers that all other allegations in Paragraph 46 of the Complaint constitute conclusions of law to which no response is required.

47. Amazon avers that the allegations in Paragraph 47 of the Complaint constitute conclusions of law to which no response is required.

48. Amazon denies the allegations in Paragraph 48 of the Complaint. Amazon also avers that the allegations in Paragraph 48 of the Complaint constitute conclusions of law to which no response is required.

49. Amazon denies that Plaintiff and the members of the class he seeks to represent are entitled to any type of remedy, relief or damages, including the relief requested in Paragraph 49 of the Complaint.

### **PRAYER**

Amazon denies that Plaintiff is entitled to any type of remedy, relief or damages, including the relief requested in Plaintiff's Prayer for Relief.

### **FIRST AFFIRMATIVE DEFENSE**

The Complaint, and each alleged claim for relief therein, fails, in whole or in part, to state

1 a claim upon which relief may be granted.

2 **SECOND AFFIRMATIVE DEFENSE**

3 Plaintiff's claims are barred, in whole or in part, because Plaintiff and others allegedly  
4 similarly situated have not sustained any injury or damage by reason of any act or omission of  
5 Amazon.

6 **THIRD AFFIRMATIVE DEFENSE**

7 The named Plaintiff fails to satisfy the prerequisites for certification of a class or  
8 collective action and, therefore, lacks standing and cannot represent the interest of others as to  
9 each purported claim.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 Plaintiff's claims, and the claims of each putative member of the purported class and  
12 subclass defined in the Complaint, or some of them, are barred in whole or in part because the  
13 Complaint is uncertain and the purported class definitions are ambiguous and conclusory.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 The types of claims alleged by Plaintiff on behalf of himself and the alleged class and  
16 subclass, the existence of which are expressly denied, are matters in which individual questions  
17 predominate and, accordingly, are not appropriate for class or collective action treatment.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 The claims alleged by Plaintiff do not raise questions of law or fact common to those of  
20 alleged putative class members, if any, whom Plaintiff purports to represent.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 The claims alleged by Plaintiff are not typical of those of the alleged class or subclass he  
23 purports to represent, the existence of which is expressly denied.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 The alleged class and subclass Plaintiff purports to represent is not manageable as a class  
26 action and accordingly is not appropriate for class or collective action treatment.

27 **NINTH AFFIRMATIVE DEFENSE**

28 The class claims alleged by Plaintiff are not maintainable for, among other reasons, failure



1 to satisfy the requirement of superiority in that proceeding as a class or collective action would  
 2 not be the superior method of adjudicating the case. For example, determining whether members  
 3 of the putative class, the existence of which is expressly denied, performed any substantive work  
 4 of which their employer was aware during the time period for which Plaintiff alleges they were  
 5 not paid would require an individual inquiry into each putative class member's experience.

#### 6 **TENTH AFFIRMATIVE DEFENSE**

7 The Complaint fails, to the extent it asserts a class or collective action, because Plaintiff is  
 8 not an adequate representative of the purported class.

#### 9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims, and the claims of each putative member of each purported class and  
 11 subclass defined in the Complaint, or some of them, are barred, in whole or in part, by applicable  
 12 statutes of limitations.

#### 13 **TWELFTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claim and the claims of each putative member of each purported class and  
 15 subclass defined in the Complaint, or some of them, are barred in whole or in part, by the doctrine  
 16 of *estoppel*.

#### 17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims, and the claims of each putative member of each purported class and  
 19 subclass defined in the Complaint, or some of them, are barred in whole or in part by the  
 20 principles of accord and satisfaction, and payment.

#### 21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims, and the claims of each putative member of each purported class and  
 23 subclass defined in the Complaint, or some of them, are barred in whole or in part because said  
 24 claims have been released by the employee(s) in question.

#### 25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 Plaintiff's statutory claims, and the claims of each putative member of each purported  
 27 class and subclass defined in the Complaint, are barred to the extent they failed to exhaust their  
 28 internal and/or administrative remedies.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The Complaint, including the averments of damages purportedly stated therein, is barred in whole or in part by the doctrine of laches.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims, and the claims of each putative member of each purported class and subclass defined in the Complaint, or some of them, are barred, in whole or in part, by Plaintiff's unclean hands and/or inequitable or wrongful conduct.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The federal Fair Labor Standards Act ("FLSA") preempts Plaintiff's second cause of action in that the application of Nevada law to an alleged violation of the FLSA would impermissibly frustrate and undermine the remedial framework Congress adopted for alleged violations of the FLSA. Specifically, *inter alia*, Congress has mandated an opt-in collective action procedure for claims under the FLSA, while Plaintiff seeks to litigate his claims as an opt-out class action pursuant to the Nevada Revised Statutes Sections 608.016, 608.260, 608.115, 608.040, and 608.050.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff and some or all of the putative class members he purports to represent failed to perform the conditions necessary to give rise to any obligations on the part of Amazon for the payment of wages alleged in the Complaint.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claims, and the claims of each putative member of each purported class and subclass defined in the Complaint, or some of them, are barred, in whole or in part, by the *de minimis* doctrine.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims, and the claims of each putative member of each purported class and subclass defined in the Complaint, or some of them, are barred, or recovery reduced, because Amazon took reasonable steps to prevent and correct the conduct alleged in the Complaint; Plaintiff and putative members of the purported class unreasonably failed to use the preventive and corrective measures that Amazon provided; and reasonable use of Amazon procedures would have

1 prevented at least some of the harm that Plaintiff and putative members of the purported class and  
 2 subclass allegedly suffered.

### 3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 If Amazon is found to have failed to pay Plaintiff, and each putative member of each  
 5 purported class or subclass defined in the Complaint, although such is not admitted, such failure  
 6 was made in good faith and in conformity with and in reliance on applicable administrative  
 7 regulations, orders, rulings, approvals, interpretations, administrative practices, and/or  
 8 enforcement policies of the Wage and Hour Division of the United States Department of Labor.

### 9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 Neither Plaintiff nor the putative class members he purports to represent are entitled to  
 11 recover any liquidated damages or penalties, as prayed for in the Complaint, because Amazon did  
 12 not willfully fail to pay overtime wages and acted in “good faith.”

### 13 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

14 The Complaint fails to state a claim for waiting time penalties under Nevada Revised  
 15 Statutes sections 608.040 and 608.050 in that some of the members of the purported class did not  
 16 resign or were not discharged prior to the filing of this action.

### 17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 Plaintiff’s monetary claims, and the claims of the putative members of the purported class  
 19 and subclass, are barred in whole or in part because they have not appropriately or adequately  
 20 mitigated their alleged damages.

### 21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 If Plaintiff has sustained any damages or if any putative member of any purported class or  
 23 subclass defined in the Complaint has sustained any damages, although such is not admitted  
 24 herein and is specifically denied, Amazon is entitled under the equitable doctrine of setoff and  
 25 recoupment to offset all obligations of the Plaintiff and putative class members owed to Amazon  
 26 against any judgment that may be entered against Amazon.

### 27 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

28 The certification of a class and/or collective action would constitute the denial of

Amazon's due process rights in violation of the Fourteenth Amendment of the United States Constitution, the California Constitution, the Washington Constitution, and/or the Nevada Constitution.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Although Amazon denies that it has committed or has responsibility for any act that could support the recovery of civil penalties in this lawsuit, if and to the extent any such act or responsibility is found, recovery of civil penalties against Amazon is unconstitutional under the United States Constitution, the Washington Constitution, and/or the Nevada Constitution, including but not limited to the excessive fines clause in the Eighth Amendment, the due process clause of the Fifth Amendment, and Section 1 of the Fourteenth Amendment.

**RESERVATION OF RIGHTS**

Defendant Amazon reserves the right to assert such additional affirmative defenses that may appear and prove applicable during the course of this litigation.

WHEREFORE, AMAZON.COM, INC. prays for judgment as follows:

1. That Plaintiff and all purported class members take nothing by this action;
2. That judgment be entered in favor of Amazon and against Plaintiff and all purported class members;
3. That Amazon be awarded its costs of suit;
4. That Amazon be awarded its attorneys' fees according to proof; and

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5. That the Court award Amazon such other and further relief as the Court may deem proper.

Dated: August 11, 2010

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Theresa Mak  
Theresa Mak

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I served true and correct copies of the foregoing document(s) on parties and their counsel of record, in the manner indicated:

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Dated this 11th day of August 2010

/s/ Theresa Mak  
 Theresa Mak

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